

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 2112

INTRODUCER: Banking and Insurance Committee

SUBJECT: Health Care Clinics

DATE: March 29, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>HE</u>	_____
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The Committee Substitute for SB 2112 redefines the criteria under which certain health care providers and practitioners are held to be exempt from licensure under the Health Care Clinic Act (ss. 440.990-440.995, F.S.). Current law exempts from licensure group practices and other entities that are wholly owned by one or more health care practitioners licensed under various laws, subject to certain other criteria. Under the bill, in order for the exemption to apply, the health care services provided could not exceed the scope of the licensed owner's health care license. However, this requirement would not apply to practices or entities owned by medical physicians, osteopaths, chiropractors, dentists, podiatrists or licensed physician assistants. The bill also exempts from licensure facilities that are wholly owned by a publicly traded corporation.

The bill requires that the medical or clinic director of a clinic ensure that all health care practitioners at the clinic provide health care services in accordance with their license or as required by law. Additionally, the clinic or medical director is limited to being the medical or clinic director of a maximum of 5 clinics with a cumulative total of no more than 200 employees and persons under contract at a given time. All persons providing health care services to individuals in a clinic are required to provide care as required by statute or indicated in law as a condition of clinic licensure.

The bill states that a license may not be granted to a health care clinic if the applicant or party subject to background screening related to the clinic has been found guilty of, or has entered a plea of nolo contendere or guilty to any felony offense under chapter 400 (nursing homes and related health care facilities), chapter 408 (Health Facility and Services Development Act), chapter 409 (social services and economic assistance), chapter 440 (Workers' Compensation

Law), chapter 624 (Florida Insurance Code), chapter 626 (insurance agents, administrators, surplus lines insurance, viatical settlements, structured settlements, unfair and deceptive trade practices) chapter 627 (insurance rates and contracts), chapter 812 (theft, robbery, and related crimes), chapter 817 (fraudulent practices and credit card crimes), chapter 831 (forgery and counterfeiting), chapter 837 (perjury), chapter 838 (bribery/misuse of public office), chapter 895 (Florida RICO Act: racketeering), chapter 896 (Florida Money Laundering Act), or any substantially comparable felony offense or crime of another state or of the United States.

The bill requires AHCA to conduct, pursuant to clinic licensure, background screening of:

- Any person with a pecuniary interest in a clinic that has control or approval authority over clinic billing, policies, business activities, or personnel decisions, including third party billing persons, managers, and management companies; or
- Any person that provides anything of value exceeding a total of \$5,000.

AHCA is given rulemaking authority rules to administer the background screening requirement.

Applicants for clinic licensure must provide AHCA the serial or operating numbers of each magnetic resonance imaging, static radiograph (static x-ray), computer tomography, or positron emission tomography machine used by the clinic if the clinic performs the technical component (the scan itself) and provides the professional component (interpreting the scan) of such services itself or uses an independent contractor to provide the professional component.

The bill requires a clinic to display a sign stating that the DFS may pay a reward of up to \$25,000 for information leading to a conviction for insurance fraud. It permits the Division of Insurance Fraud to inspect clinics and have complete access to clinic premises to ensure compliance.

The PCS places a 2 year expiration date on each certificate of exemption. The bill gives AHCA the authority to investigate any applicant claiming an exemption for purposes of compliance, and provides it with access to the premises of a clinic and all billings and records indicated in s. 400.9915(2), F.S., and in agency rules. A health provider that self-determines or claims a certificate of exemption, but does not meet the exemption claimed is subject to the provisions applicable to the unlicensed operation of a health care clinic.

This Committee Substitute substantially amends the following sections of the Florida Statutes: 400.9905, 400.991, and 400.9935.

## **II. Present Situation:**

### **Health Care Clinic Act—Clinic Licensure**

Part XIII of Chapter 400, F.S., contains the Health Care Clinic Act (ss. 400.990-400.995, F.S.). Under the act, the Agency for Health Care Administration licenses health care clinics, ensures that such clinics meet basic standards, and provides administrative oversight. Any entity that meets the definition of a “clinic”—an entity at which health care services are provided to

individuals and charges for reimbursement for such services—must be licensed as a clinic.<sup>1</sup> The definition of clinic includes mobile clinics<sup>2</sup> and portable equipment providers.<sup>3</sup>

Every entity that meets the definition of a “clinic” must maintain a valid license with AHCA at all times, and each clinic location must be licensed separately. A clinic license lasts for a 2 year period. The fees payable by each clinic to AHCA for licensure cannot exceed \$2,000, adjusted for changes in the Consumer Price Index for the previous 12 months. Each clinic must file in its application for licensure information regarding the identity of the owners, medical providers employed, and the medical director and proof that the clinic is in compliance with applicable rules. The clinic must also present proof of financial ability to operate a clinic. A level 2 background screening pursuant to ch. 435, F.S., is required of each applicant for clinic licensure. A license may not be granted to a clinic if the applicant has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any offense prohibited under the level 2 standards for screening or a violation of insurance fraud under s. 817.234, F.S., within the past 5 years.

Each clinic must have a medical director or clinic director who agrees in writing to accept legal responsibility pursuant to s. 400.9935, F.S., for the following activities on behalf of the clinic:

- A sign identifying the medical director that is readily visible to all patients;
- Ensuring that all practitioners providing health care services or supplies to patients maintain a current, active, and unencumbered Florida license;
- Reviewing patient referral contracts or agreements made by the clinic;
- Ensuring that all health care practitioners at the clinic have active appropriate certification or licensure for the level of care being provided;
- Serving as the clinic records owner;
- Ensuring compliance with the recordkeeping, office surgery, and adverse incident reporting requirements of ch. 456, F.S., the respective practice acts, and rules adopted under the Health Care Clinic Act;
- Conducting systematic reviews of clinic billings to ensure billings are not fraudulent or unlawful. If an unlawful charge is discovered, immediate corrective action must be taken;<sup>4</sup>

Licensed clinics are subject to unannounced inspections of the clinic by AHCA personnel to determine compliance with the Health Care Clinic Act and applicable rules. The clinic must allow full and complete access to the premises and to billing records. AHCA may deny, revoke,

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<sup>1</sup> Section 400.9905(4), F.S.

<sup>2</sup> Section 400.9905(6), F.S., defines a “mobile clinic” as “a movable or detached self-contained health care unit within or from which direct health care services are provided to individuals and which otherwise meets the definition of a clinic in subsection (4).”

<sup>3</sup> Section 400.9905(7), F.S., defines a “portable equipment provider” as “an entity that contracts with or employs persons to provide portable equipment to multiple locations performing treatment or diagnostic testing of individuals, that bills third-party payors for those services, and that otherwise meets the definition of a clinic in subsection (4).”

<sup>4</sup> If the clinic performs only the technical component of a magnetic resonance imaging (MRI), static radiograph, computed tomography (CT scan), or positron emission scan (PET scan), and provides the professional interpretation of such services in a fixed facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Accreditation Association for Ambulatory Health Care (AAA) and the American College of Radiology (ACR), and the percentage of scans in the preceding quarter that were billed to a PIP insurance carrier is under 15%, the chief financial officer of the clinic may assume the responsibility for the conduct of systematic reviews of clinic billings to ensure they are not fraudulent or unlawful. See s. 400.9935(1)(g), F.S.

or suspend a health care clinic license and impose administrative fines of up to \$5,000 per violation pursuant to s. 400.995, F.S.

### **Health Care Clinic Act—Exemption from Licensure**

Though all clinics must be licensed with AHCA, s. 400.9905(4), F.S., contains a lengthy list of entities that are not considered a “clinic” for the purposes of clinic licensure. An entity that is licensed in Florida pursuant to various chapters specified<sup>5</sup> in ss. 400.9905(4)(a) through 400.9905(4)(d), F.S., may be exempt from clinic licensure if it meets one of the following provisions:

- The entity is licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license;<sup>6</sup>
- It is an entity that owns, directly or indirectly, an entity licensed or registered by the state under one or more of the specified practice acts that only provides services within the scope of its license;
- It is an entity that is owned, directly or indirectly, by an entity licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license; or
- It is an entity that is under common ownership, directly or indirectly, with an entity licensed or registered by the state under one or more of the specified practice acts and only provides services within the scope of its license.

In order to meet the above criteria for exemption from clinic licensure, the clinic cannot offer health care services beyond the scope of its license. For example, if the entity is exempt from licensure because it is licensed under chapter 463, F.S., for optometry, then the clinic’s services are limited to those authorized under chapter 463, F.S., relating to optometry.

Also eligible for an exemption is a sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, F.S., (which includes physicians, osteopaths, chiropractors, podiatrists, dentists, and optometrists). The entity must be wholly owned by one or more of these physicians or by a physician and the spouse, parent, child, or sibling of the physician and the entity must be directly supervised by the physician.

Similarly, a sole proprietorship, group practice, partnership or corporation that provides health care services by licensed health care practitioners under specified practice acts<sup>7</sup> is also eligible

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<sup>5</sup> The licensures that permit an entity to be exempt from clinic licensure are licensures for: Hospitals (ch. 395, F.S.); Birthing Centers (ss. 383.30-383.335, F.S.); Termination of Pregnancy/Abortion (ch. 390, F.S.); Mental Health (ch. 394, F.S.); Substance Abuse (ch. 397, F.S.); chapter 400 licensure—except for licensure under the Health Care Clinic Act; Optometry (ch. 463, F.S.); Pharmacy (ch. 465, F.S.); Dentistry (ch. 466, F.S.); Electrolysis (ch. 478, F.S.); Clinical Laboratories (Part I of ch. 483, F.S.); Optical Devices and Hearing Aids (ch. 484, F.S.); Continuing Care (ch. 651). Other qualifying entities include end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; an entity that provides neonatal or pediatric hospital based healthcare services by licensed practitioners solely within a hospital licensed under ch. 395, F.S.

<sup>6</sup> See footnote 5.

<sup>7</sup> The practice acts specified in the exemption are for: Acupuncture (ch. 457, F.S.); Medical Practitioners—including physicians assistants (ch. 458, F.S.); Osteopathy (ch. 459, F.S.); Chiropractic—including chiropractic assistants (ch. 460, F.S.); Podiatry (ch. 461, F.S.); Naturopathy (ch. 462, F.S.); Optometry (ch. 463, F.S.); Dentistry (ch. 466, F.S.); Midwifery (ch. 467, F.S.); Massage Therapy (ch. 480, F.S.); Optical Devices and Hearing Aids (ch. 484, F.S.); Physical Therapy (ch. 486, F.S.); Psychology (ch. 490, F.S.); Clinical Counseling (ch. 491, F.S.); Speech-Language Pathology and Audiology (Part

for licensure. The entity must be wholly owned by one or more licensed health care practitioners<sup>8</sup> or the practitioners and the spouse, parent, child or sibling of the licensed health care practitioner. One of the owners who is a licensed health care practitioner must supervise the business activities of the entity and ensure compliance with all federal and state laws. A health care practitioner is not permitted to supervise services beyond the scope of that practitioner's license.<sup>9</sup> However, the entity may employ physicians and practitioners to perform and supervise health care services that are beyond the scope of the owner's licensure.

Exemptions from clinic licensure are also available for the following:

- An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or s. 501(c)(4);
- A community college or university clinic;
- An entity owned by the federal or state government, including agencies, subdivisions and municipalities;
- Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents or fellows;
- Entities that provide only oncology or radiation therapy services by physicians licensed under ch. 458 or ch. 459, F.S.
- Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

Health care providers and practitioners may voluntarily apply to AHCA for a certificate of exemption under the act, but are not required to do so. Such providers find it useful to obtain a certificate of exemption to present to an insurance company, particularly a PIP insurer, to prove that the provider is not required to be licensed as a health care clinic.

### **Health Care and Personal Injury Protection Insurance Fraud; Interim Project Report**

The staff of the Banking and Insurance Committee produced the interim project report, *Florida's Motor Vehicle No-Fault Law*, (2006-102). The following is a summary of information contained in that report related to health care and PIP fraud.

Florida's Chief Financial Officer estimates that insurance fraud costs the average Florida family as much as \$1,500 a year in increased premiums and higher costs for goods and services. Motor vehicle insurance fraud and abuse constitutes a large part of these costs.<sup>10</sup> Therefore, efforts to reduce fraud and abuse are critical to maintaining a viable no-fault insurance system in this state.

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I of ch. 468, F.S.); Occupational Therapy (Part III of ch. 468); Dietetic and Nutrition (Part X of ch. 468, F.S.); Athletic Trainers (Part XIII of ch. 468, F.S.); Orthotics, Prosthetics' and Pedorthics (Part XIV of ch. 468, F.S.); Advanced Registered Nurse Practitioners (s. 464.012, F.S.)

<sup>8</sup> See footnote 7.

<sup>9</sup> An exception is that a clinic owned by a licensee in s. 456.053(3)(b), F.S., (comprehensive rehabilitation services for speech, occupational or physical therapy) that only provides services authorized pursuant to that s. 456.053(3)(b), F.S., may be supervised by a licensee specified by that section (Part I or III of ch. 468, F.S., or ch. 486, F.S.)

<sup>10</sup> Insurance fraud involves intentional deception or misrepresentation intended to result in an unauthorized or illegal benefit (e.g., billing for services not rendered). Insurance abuse usually involves charging for services that are not medically necessary, do not conform to professionally recognized standards, or are unfairly priced. Abuse may be similar to fraud except that it is not possible to establish that the abusive acts were done with an intent to deceive the insurer.

The fraud statistics indicate the severity of the challenge in enforcing personal injury protection fraud violations as the number of fraud referrals escalates. According to the Director of the Division of Insurance Fraud, PIP fraud referrals have increased over 400 percent from 2002-2003 (615 referrals) to 2004-2005 (2,628).<sup>11</sup> The Division is able to open less than 25 percent of these referrals, according to the Director.

Florida's no-fault laws are being exploited by sophisticated criminal organizations in schemes that involve health care clinic fraud, staging (faking) car crashes,<sup>12</sup> manufacturing false crash reports, adding occupants to existing crash reports, filing PIP claims using contrived injuries, colluding with dishonest medical treatment providers to fraudulently bill insurance companies for medically unnecessary or non-existent treatments, and patient-brokering (referring patients to medical providers for a bounty), according to representatives with the division.

Personal injury protection fraud is more prevalent in major metropolitan areas like Miami-Dade County which has been the focus of the majority of staged crashes investigated by the division. In the past 24 months, the Miami-Dade office has received 277 complaints or referrals about staged crashes alone, investigated 116 of these, and arrested 260 offenders associated with PIP fraud. Also, more than 60 individuals have now been charged under the 2003 law that mandated minimum mandatory 2-year prison terms for staging vehicle crashes.

According to division officials, the magnitude of the PIP fraud problem is illustrated by the large number of health care clinics established in Florida under the Health Care Clinic Act (Act). Current figures indicate that over 65 percent<sup>13</sup> of the more than 2,435 medical clinics licensed by the Agency for Health Care Administration (AHCA) statewide are located in Dade, Broward, and Palm Beach counties.<sup>14</sup> Moreover, 4,590 clinics have received exemption certificates and are therefore subject to no state regulation. (This figure does not count the clinics that have decided not to file for an exemption certificate with AHCA.) Division intelligence indicates that "hundreds" of these clinics have been established primarily in the South Florida area for the sole purpose of perpetrating PIP fraud, according to DIF officials.<sup>15</sup> The types of crimes perpetrated by these clinics often involve fraudulent providers (who fabricate their credentials, bills, or the office itself);<sup>16</sup> medical mills that provide treatments that are not medically necessary,<sup>17</sup>

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<sup>11</sup> The 2005 information is from January through July 2005.

<sup>12</sup> Health care clinic fraud and staged accidents are the most common types of PIP fraud.

<sup>13</sup> National Insurance Crime Bureau, White Paper: *Addressing Personal Injury Protection Fraud through the Florida Medical Fraud Task Force* (August 2005). The Florida Medical Fraud Task Force is made up of NICB agents, DIF detectives, and insurance company investigators and focuses primarily on clinics providing PIP services to persons involved in automobile accidents in South Florida. Often these "investigations surround soft tissue injuries and chiropractic treatment." (Page 3 of White Paper.)

<sup>14</sup> Data as of September 2005. Officials with AHCA state that of the 2,435 licensed clinics, a total of 40 licenses have been denied and 23 of these were denied due to background screening issues. Twenty-eight clinics are in litigation with the agency and there are 154 applications currently being reviewed for licensure. Currently, the Unit receives about 50 license and 100 certificate of exemption applications a month.

<sup>15</sup> Division of Insurance Fraud Budget Request, FY 2005-2006. See also NICB White Paper, at note 122.

<sup>16</sup> Recently, five medical clinics in the City of Hialeah were dismantled along with the arrest of 6 people which involved sham invoices worth over \$2 million.

<sup>17</sup> On September 22, 2005, 17 physicians, physical therapists, a physician's assistant and others were sentenced to prison in Miami for fraudulently billing Medicare and private insurance companies for approximately \$5.5 million of medical services, medical equipment, medications, and physical therapy that was either not provided or was medically unnecessary. The scheme involved several clinics, medical supply and durable medical equipment companies paying kickbacks to Medicare beneficiaries to serve as patients of the clinics and three other medical companies. For each of the patients, the defendants

purposely miscode diagnosis, inflate bills or charge for services that are not rendered; or “doc in the box” schemes where often older medical providers are paid for the use of their license.

Officials with AHCA have found that various fraudulent motor vehicle insurance acts currently prohibited under Part I of ch. 817, F.S., are not disqualifying offenses for clinic licensure. These crimes include presenting a false or fraudulent motor vehicle insurance application to an insurer; presenting a false or fraudulent vehicle insurance card; and obtaining a motor vehicle with the intent to defraud. Adding these criminal provisions to the Act would prohibit persons convicted of these motor vehicle crimes from obtaining a clinic license.

The interim project report made the following recommendations related to health care clinics:

- Require all clinics that accept PIP reimbursement and that qualify for an exemption from licensure to apply to AHCA for an exemption certificate limited to 2 years and subject to a renewal application, and authorize AHCA to inspect such clinics.
- Require that motor vehicle insurance fraud crimes under Part I of chapter 817, F.S., be disqualifying offenses for clinic licensure.
- Mandate that clinics post anti-fraud reward signs.

### **III. Effect of Proposed Changes:**

**Section 1.** Amends s. 400.9905(4), F.S., to redefine the criteria under which certain health care providers and practitioners are held to be exempt from licensure under the Health Care Clinic Act.

Under current s. 400.9905(4)(f), F.S., a sole proprietorship, group practice, partnership or corporation that provides health care services by physicians covered by s. 627.419, F.S., (physicians, osteopaths, podiatrists, chiropractors, dentists, and optometrists) is exempt from licensure if the health care services are supervised by at least one of those physicians and is wholly owned by one or more such physicians or by a physician and a spouse, parent, child or sibling of the physician. The bill clarifies this provision by stating that clinics wholly owned by health care practitioners licensed by the state under chapter 458 (medical physicians), chapter 459, F.S., (osteopaths), chapter 460, F.S., (chiropractors) and chapter 461, F.S., (podiatrists) or covered by chapter 466, F.S., (dentists) are exempt from licensure. A physician assistant who is licensed pursuant to one of these practice acts would also be covered. The treatment provided must still be directly supervised by at least one of these types of health care practitioners and be wholly owned by one or more such practitioners or by a practitioner and the spouse, parent, child or sibling of that practitioner.

Paragraph (g) of s. 400.9905(4), F.S., is also amended by the bill. The amended paragraph (g) is similar to the current paragraph (f) described above, except that it provides an exemption from licensure as a health care clinic to health care practitioners licensed under different chapters of the Florida Statutes. The practice acts included in this paragraph include chapter 457, F.S. (acupuncture), chapter 462, F.S. (naturopathy), chapter 463, F.S. (optometrists), chapter 467, F.S. (midwifery), chapter 480, F.S. (massage therapists), chapter 484, F.S. (opticians and hearing aid specialists), chapter 486, F.S. (physical therapists), chapter 490, F.S. (psychology), chapter

491, F.S. (clinical counselors), Part I chapter 468, F.S. (speech language pathology and audiology), Part III chapter 468, F.S. (occupational therapists) Part X chapter 468, F.S. (dietetics), Part XIII chapter 468, F.S. (athletic trainers), Part XIV chapter 468, F.S. (orthotics, prosthetics, and pedorthics), and s. 464.012, F.S. (advanced registered nurse practitioners). The bill requires at least one owner who is a licensed health care practitioner to supervise the health care services rendered, rather than the business activities of the entity. Additionally, the bill states that in order to qualify for an exemption from licensure, the health care services provided by the entity cannot exceed the scope of the licensed owner's health care license. Currently, the requirement is that each practitioner may not supervise services beyond the scope of the practitioner's license.

A new exemption from clinic licensure is created for a clinical facility that is wholly owned by a publicly traded corporation. Publicly traded corporation is defined as a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

In a similar fashion, the bill also broadens the exemption from clinic licensure granted to entities that provide oncology or radiation therapy services by physicians licensed under chapter 458, F.S., or chapter 459, F.S. The bill eliminates the requirement that such entities may "only" provide such services, and it requires such entities to be owned by a corporation whose shares are publicly traded on a registered stock exchange. This broadened exemption may be unnecessary given the new exemption for all facilities owned by a publicly traded company. However, this particular broadened exemption does not require the exchange to be registered with the U.S. Securities and Exchange Commission as a national securities exchange.

**Section 2.** Amends s. 400.991(7), F.S., which contains the requirements that an applicant for clinic licensure must comply with, including the background screening of the applicant and offenses that disqualify a person from being granted a clinic license. The bill states that a license may not be granted to a clinic if the applicant or other person subject to background screening requirements has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to any felony offense under chapter 400, (nursing homes and related health care facilities), chapter 408, F.S., (Health Facility and Services Development Act), chapter 409(social services and economic assistance), chapter 440, (Workers' Compensation Law), chapter 624 (Florida Insurance Code), chapter 626 (insurance agents, administrators, surplus lines insurance, viatical settlements, structured settlements, unfair and deceptive trade practices) chapter 627 (insurance rates and contracts), chapter 812 (theft, robbery, and related crimes), chapter 817 (fraudulent practices and credit card crimes), chapter 831 (forgery and counterfeiting), chapter 837 (perjury), chapter 838 (bribery/misuse of public office), chapter 895 (Florida RICO Act: racketeering), chapter 896 (Florida Money Laundering Act), or any substantially comparable felony offense or crime of another state or of the United States. This would be in addition to any offense prohibited under the level 2 standards for background screening contained in s. 435.04, F.S.

The bill also increases from 5 to 10 years the time period that an applicant must be free of the disqualifying conduct set forth in s. 400.991(7), F.S. Each person required to provide a background screening for clinic licensure must disclose to AHCA any arrest for any crime for which any court disposition other than dismissal has been made within the past 10 years; failure

to do so is a material omission in the application process which can lead to the denial or removal of a clinic exemption or license.

In addition to expanding the number of disqualifying offenses pursuant to clinic licensure, the bill also increases the scope of background screening. The bill requires AHCA to conduct background screening of:

- Any person with a pecuniary interest in a clinic that has control or approval authority over clinic billing, policies, business activities, or personnel decisions, including third party billing persons, managers, and management companies.
- Any person that provides anything of value exceeding a total of \$5,000.

The bill provides AHCA with authority to adopt rules to administer the section. If a person subject to background screening under this provision has committed a disqualifying felony offense in the past 10 years, the applicant will be denied clinic licensure.

Applicants for clinic licensure must provide AHCA the serial or operating numbers of each magnetic resonance imaging, static radiograph (static x-ray), computer tomography, or positron emission tomography machine used by the clinic if the clinic performs the technical component (the scan itself) and provides the professional component (interpreting the scan) of such services itself or uses an independent contractor to provide the professional component. The applicant must also provide the name and address of the clinic, the name of the machine's manufacturer, and other information that AHCA requires for the purpose of identifying the machine. The information must be provided to the agency upon renewal of the clinic's licensure and within 30 days after a clinic begins using such a machine. The requirement is designed to prevent the use of a machine used to provide a scan or x-ray that has failed to meet the accreditation requirements required for clinic licensure under s. 400.9935(11), F.S. Under that subsection, a clinic that performs MRI services must be accredited within 1 year of licensure by the Joint Commission on Accreditation of Healthcare Organizations, the American College of Radiology, or the Accreditation Association for Ambulatory Health Care.

**Section 3.** Amends s. 400.9935, F.S. The bill requires that the medical or clinic director of a clinic ensure that all health care practitioners at the clinic provide health care services in accordance with their license or as required by law. Additionally, the clinic or medical director is limited to being the medical or clinic director a maximum of 5 clinics with a cumulative total of no more than 200 employees and persons under contract at a given time. However, AHCA may allow for a waiver to this limitation upon a showing of good cause and if the agency determines that the medical director will be able to adequately perform his duties. Additionally, all persons providing health care services to individuals in a clinic are required to provide care as required by statute or indicated in law as a condition of clinic licensure.

The legislation places a 2-year expiration date on each certificate of exemption, but allows for the certificate to be renewed. The application for renewing a certificate must be submitted to AHCA prior to the certificate's exemption. The bill requires the signature on an application for a certificate of exemption to be notarized and signed by persons having knowledge of the truthfulness of its contents. If AHCA makes a request in writing for additional information or a clarification, the applicant must file the response with the agency within 21 days of receipt of the request, or the application shall be denied. Submission of an application that contains fraudulent material or misleading information is a third degree felony. AHCA must issue an emergency order suspending a certificate of exemption when the agency finds that an applicant has provided

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false or misleading material information, omitted a material fact from an application, or submitted false or misleading information when self-determining exempt status and materially misleading the agency as to such status. The bill gives AHCA the authority to investigate any applicant claiming an exemption for purposes of compliance, and provides it with access to the premises of a clinic and all billings and records indicated in s. 400.9915(2), F.S., and in agency rules.

A certificate of exemption is valid only for the reasons, location, persons and entity set forth in an application. Additionally, the certificate is valid only when issued and current. The person or entity claiming or issued an exemption must continue to meet the requirements for an exemption at all times, or the certificate shall be invalid from the date such person or entity is no longer exempt. A certificate of exemption is considered withdrawn if AHCA cannot confirm exempt status. A health provider that self-determines or claims a certificate of exemption, but does not meet the exemption claimed is subject to the provisions applicable to the unlicensed operation of a health care clinic. A health care clinic that has been denied a certificate of exemption and attempts to again apply for an exemption must file the initial application and pay the appropriate fee. AHCA must grant or deny an application for a certificate of exemption in accordance with s. 120.60(1), F.S.

The bill requires a clinic to display a sign stating that the DFS may pay a reward of up to \$25,000 for information leading to a conviction for insurance fraud. The Division of Insurance Fraud is granted authority to inspect clinics and have complete access to clinic premises to ensure compliance.

**Section 4.** The bill would take effect January 1, 2007.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The proposed bill will potentially subject more entities to the clinic licensure process, subjecting them to additional costs, requirements, and oversight by AHCA. An entity

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seeking to retain a certificate of exemption will have to re-apply for a renewal of the certificate every two years, paying the \$100 application fee each time.

Representatives from AHCA and the Division of Insurance Fraud assert that the provisions of the proposed bill will reduce personal injury protection insurance fraud, which is a large and growing problem in the health care clinic arena.

**C. Government Sector Impact:**

AHCA will have an increase in its oversight responsibilities over clinics and exempt entities that file for a certificate of exemption from clinic licensure. Limiting certificate of exemptions to 2-years will increase renewal application fees paid to AHCA, but with a corresponding increase in workload to process the renewal applications.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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